

STATE OF ARKANSAS  
SECURITIES DEPARTMENT

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IN THE MATTER OF  
STEVEN MICHAEL HERRERA,  
a/k/a RICHARD WINSTEAD

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No S-06-006-06-CD01

CEASE AND DESIST ORDER

The Staff of the Arkansas Securities Department (the Staff) has received information and has in its possession certain evidence which indicates that STEVEN MICHAEL HERRERA, a/k/a Richard Winstead has violated provisions of the Arkansas Securities Act (the Act), codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 2000).

FINDINGS OF FACT

1. STEVEN MICHAEL HERRERA (HERRERA) is a citizen of Texas. At times, he has also gone by the name of Richard Winstead.
2. BERRY RESOURCES, INC. (BRI) is a corporation formed in Kentucky in 2001. BRI is located in Bowling Green, Kentucky and is involved in the oil and gas industry in Kentucky and surrounding states, including acting as the operator and manager of oil and gas projects.
3. RALPH BERRY (BERRY) is the president, secretary, treasurer, sole director and owner of BRI.
4. In early September, 2005, HERRERA called an Arkansas resident (AR) and represented himself to be Richard Winstead, a person marketing units of the Berry Prospect # 2, purported to be a Kentucky limited partnership formed to invest in the drilling and completion of two oil and gas wells in Clinton County, Kentucky. HERRERA sent to AR a

- package including what was represented to be a private placement memorandum (PPM) about this project. According to HERRERA and the PPM, units cost \$12,500 each, \$9,000 payable upon subscription and \$3,500 upon completion of both wells (completion costs of \$1,750 per well). Each unit of the limited partnership allegedly entitled a purchaser to a 3.33% working interest and a 2.33% net revenue interest in these two oil and gas wells.
5. On 23 September 2005, AR purchased a quarter of a unit by writing a check for \$2,250 to Berry Resources and sending it by use of the Fed Ex envelope enclosed with the package containing the PPM to BRI's address in Bowling Green, Kentucky. En route, however, the package was diverted to an address in Dallas, Texas. The check was then deposited into a bank account opened by HERRERA, b/d/a Berry Resources.
  6. On 18 October 2005, after receiving a call from HERRERA— still representing himself to be Richard Winstead— that the wells had been drilled and completion costs were due and payable, AR sent a check for \$875 by use of the same Fed Ex account to Berry Resources, but this time the package was sent to an address in Irving, Texas. Again, the check was deposited into a bank account opened by HERRERA, b/d/a Berry Resources.
  7. BERRY and BRI never had any connection with HERRERA. The PPM sent to AR by HERRERA was not a PPM used by BRI, although it seemed to have been taken from earlier PPMs used for other projects. The drilling site for the two purported wells to be drilled in the Berry Prospect # 2 was an oil and gas lease known as the Doc Hay Lease in Clinton County, Kentucky. BRI and BERRY had considered a drilling project in this area, but by the end of 2003 or the beginning of 2004, BRI and BERRY had decided against it. Had the PPM been genuine, it would have shown a drilling site in Tennessee rather than Kentucky, which is

where BRI and BERRY decided to drill instead of in the Doc Hay Lease in Clinton County, Kentucky.

### APPLICABLE LAW

8. Ark. Code Ann. § 23-42-102(15)(A)(xvi) (Supp. 2005), defines as security in pertinent part as a certificate of interest or participation in an oil and gas lease or in payments out of production under such a lease.
9. Ark. Code Ann. § 23-42-507(2) (Repl. 2000) provides that it is unlawful for any person in connection with the offer or sale of any security to make any untrue statement or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made.
10. Ark. Code Ann. § 23-42-507(3) (Repl. 2000) provides that it is unlawful for any person in connection with the offer or sale of any security to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

### CONCLUSIONS OF LAW

11. Units of a limited partnership formed to invest in drilling and completion of oil and gas wells and entitling a purchaser of partnership units to working interests and net revenue interests of the oil and gas wells to be drilled and developed are securities in accordance with Ark. Code Ann. § 23-42-102(15)(A)(xvi) (Supp. 2005).
12. HERRERA's representation of himself to AR as Richard Winstead, an agent of the BRI, the issuer of this security, as noted in ¶¶ 4 and 6, when in reality his name was not Richard Winstead and he had no relationship whatever with BRI or BERRY, was an untrue statement made in connection with the offer or sale of a security in violation of Ark. Code Ann. § 23-

42-507(2) (Repl. 2000).

13. The representations made in the PPM to AR concerning an oil and gas well project that was totally fictitious, as noted in ¶¶ 4-7, were untrue statements made in connection with the offer or sale of a security in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 2000).
14. HERRERA's opening of bank accounts in the name of Berry Resources and having AR make his checks out to Berry Resources, as noted in ¶¶ 5-7, is an act or practice that would operate as a fraud upon AR in that it led AR to believe that he was dealing not with HERRERA, but with BRI, in violation of Ark. Code Ann. § 23-42-507(3) (Repl. 2000).
15. HERRERA's production of a PPM that purports to be that of BRI for an oil and gas well project in Kentucky, which is the nature and locale of BRI's business, as noted in ¶¶ 2 and 4, is an act or practice that would operate as a fraud upon AR in that it led AR to believe that he was dealing not with HERRERA, but with BRI, in violation of Ark. Code Ann. § 23-42-507(3) (Repl. 2000).

### OPINION

As per the facts and law set forth above, the conclusion is inescapable that the respondent, STEVEN MICHAEL HERRERA, has engaged in securities fraud in contravention of Ark. Code Ann. § 23-42-507 (Repl. 2000), and he therefore should be ordered to immediately cease and desist all actions in connection with the offer or sale of all securities in accordance with Ark. Code Ann. § 23-42-209(a)(1)(A) (Repl. 2000).

## ORDER

IT IS THEREFORE ORDERED that STEVEN MICHAEL HERRERA, a/k/a Richard Winstead, **CEASE AND DESIST** from any further actions in the state of Arkansas in connection with the offer or sale of the securities described above or any other securities.

WITNESS MY HAND AND SEAL this 16<sup>th</sup> day of February, 2006.



Michael B. Johnson  
ARKANSAS SECURITIES COMMISSIONER